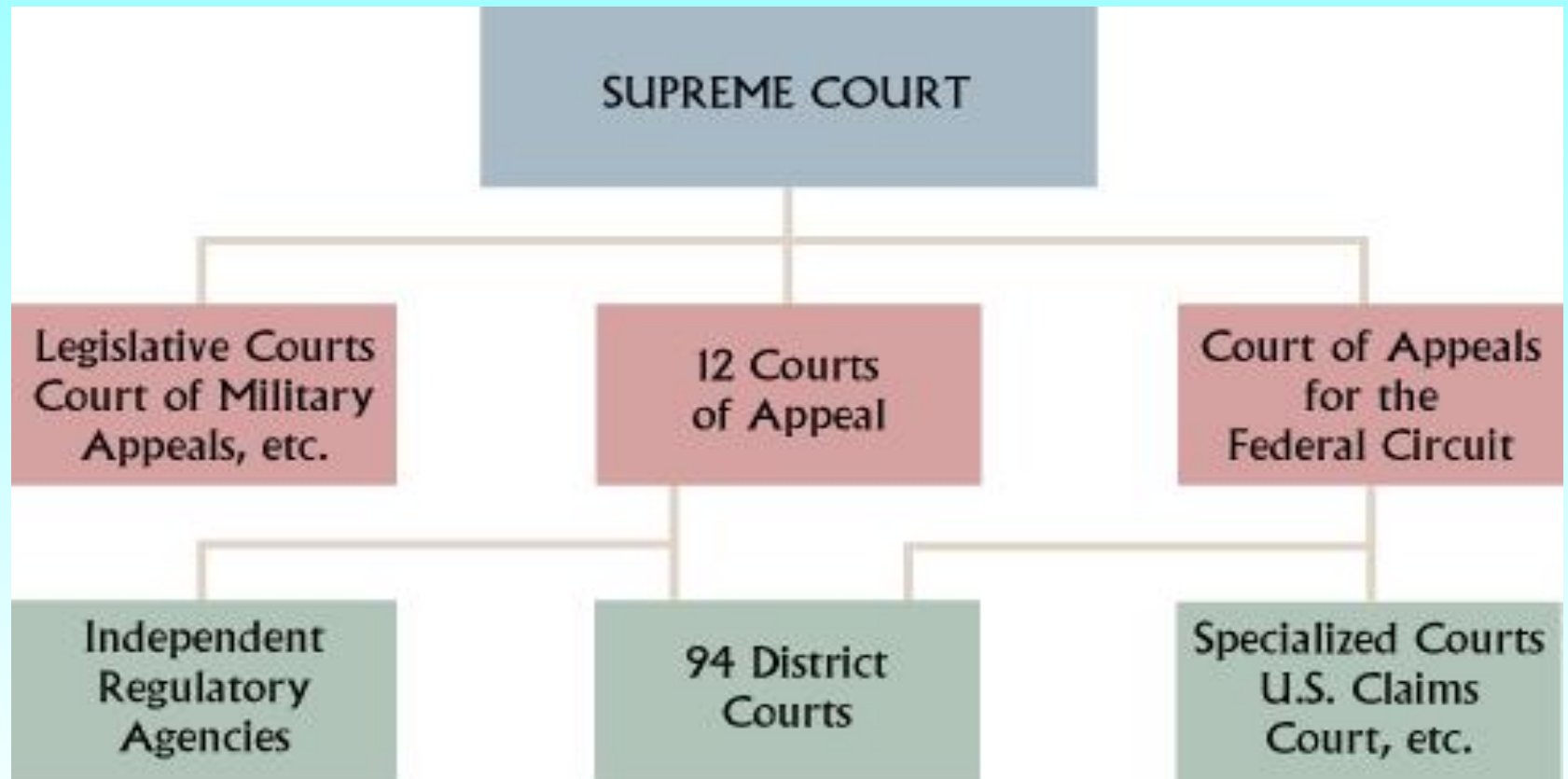


Forming a Judicial Branch

- Under Articles of Confederation there was no national court system.
- Under Constitution- Article III (which is much shorter than Article I- Legislative, Article II- Executive) was rather vague on just what their powers should be.
- However, it specifically creates the Supreme Court and gives Congress the power to create lower courts.
- Constitution delegated Supreme Court “**original jurisdiction** in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have **appellate jurisdiction**”
- The Judiciary Act of 1789 created the Judicial structure that for the most part has remained intact

The Judicial Branch

Article III

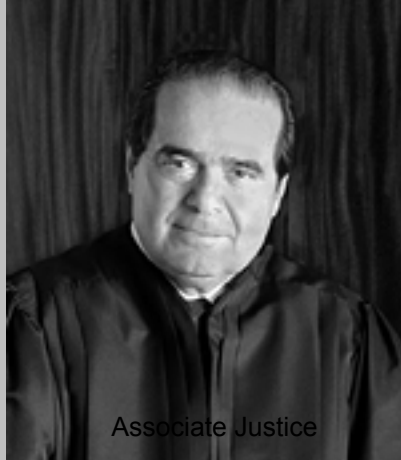


The Supreme Court

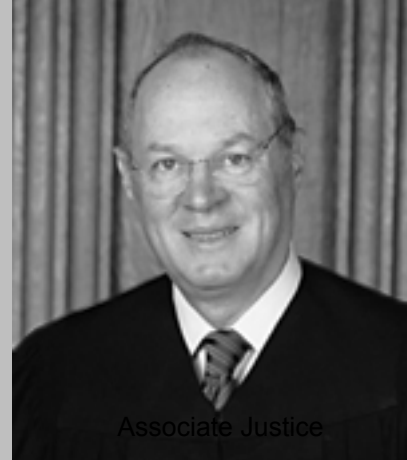
- Supreme Court- 9 judges for life so long “good behavior” – appointed by President, confirmed by Senate
- Can only be removed if impeached (treason, bribery, high crimes, misdemeanors)
- Two of the current nine were appointed by President George W. Bush:
 - Chief Justice Roberts + Samuel Alito
- Barack Obama
 - Sonia Sotomayor
 - Elena Kagan



Chief Justice



Associate Justice



Associate Justice



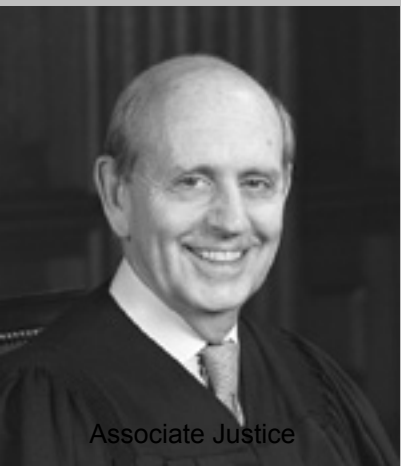
Associate Justice

John Roberts

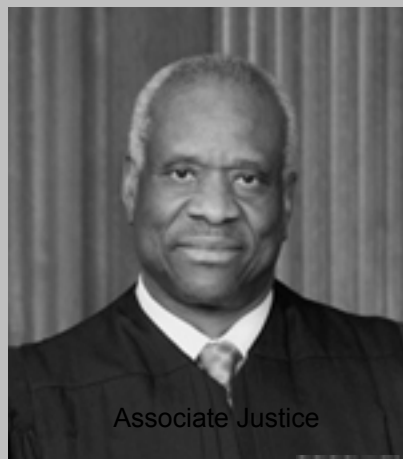
Antonin Scalia

Anthony M Kennedy

Ruth Bader Ginsburg



Associate Justice



Associate Justice



Associate Justice



Associate Justice

Stephen Breyer

Clarence Thomas

Samuel Alito

Sonia Sotomayor



Associate Justice

Elena Kagan

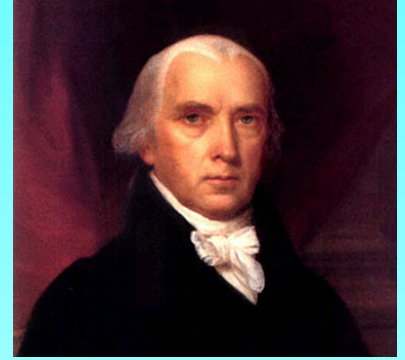
The Power of the Judicial Branch

- Founders gave the courts some independence from Congress and President
- **Most important job of Supreme Court + Judicial Branch**
 - Deciding *constitutionality of laws* and other actions of government
 - Called *Judicial Review* (not mentioned in Constitution)-
Marbury v. Madison (1803)
 - *Judicial Review* ensured that the Supreme Court had the final authority to interpret the meaning of the Constitution





Marbury V. Madison 1803



- Claimed by the 3rd Chief Justice John Marshall
- Background on the Case:
 - 1800 Election between John Adams (Federalist) v. Thomas Jefferson (Democratic-Republican)- Jefferson wins
 - Adams fears Jefferson will do whatever possible to destroy his party and he wanted to ensure the Federalist party would have a lasting place in DC
 - So Adams made a dramatic mid-night appointment of judges



Marbury V. Madison Continued...



- Jefferson orders James Madison (Secretary of State) not to deliver Adams' appointments.
- William Marbury--one of the appointees--was not okay with Jefferson and Madison's decisions
- Marbury asked the Supreme Court to force Madison to deliver the appointment
 - Marbury went to the SC because one of the terms set forth in the Judiciary Act of 1789 gave the Supreme Court the power to make a government official perform a certain duty

What Should the Court Do?

The Supreme Court was faced with a dilemma when deciding how to rule on this case.

It could:

- force Madison to deliver the order.....BUT the justices thought
 - he probably wouldn't have delivered it
 - Resulting in a weakening of the power of the Supreme Court
- Not force Madison to deliver the order
 - making the Court look weak again..

The Decision

The Court wouldn't force Madison to deliver the appointment because the Judiciary Act of 1789 which gave the Supreme Court the power to force a government official to do something was in and of itself unconstitutional (when a action violates the laws/guidelines set forth in the constitution)





Chief Justice John Marshall's Majority Opinion

...there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when legislature shall please to alter it. If the former part...be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of people to limit a power in its nature illimitable.

It is emphatically the province and duty of the judicial department to say what the law is...so if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case...the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty

What does Judicial Review Mean for the Judicial Branch?

- It established the Judicial branch as an equal partner in government.(Remember the Constitution, Article III, was very vague on what their powers should be)
- Since 1803 the Supreme Court and other courts have used judicial review in thousands of cases



The Interpreting the Constitution-

See Page 47 “War of Words” to add notes

- **Loose Constructionist-** Believe that our founding fathers of the Constitution purposefully used general terms (didn’ t spell it out) because they wanted future generations to figure it out- **This would allow the Constitution to adapt to changing times and changing views**
- **Strict Constructionist or Originalism-** Look at the original meaning of Constitution- words are plain and the meaning should not change overtime

Judicial Activism vs. Judicial Restraint

(pg. 48 “War of Words”)

- **Judicial Activism-** The belief that Supreme Court Justices should actively make policy and sometimes redefine the Constitution.
- **Judicial Restraint-** The belief that Supreme Court Justices should NOT actively try to shape social and political issues or redefine the Constitution

Activism or Restraint?

“The Constitution is not an empty bottle...it is like a statute, and the meaning doesn't change. A democratic system is destroyed if the smug assurances of each age are removed from the democratic process and written into the Constitution.”

-Antonin Scalia, 1996

Activism or Restraint?

“The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times